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Security Council Committee established pursuant to resolution 1540 (2004)

Note verbale dated 31 January 2005 from the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of the Republic of South Africa to the United Nations presents its compliments to the Chairman of the Committee established pursuant to Security Council resolution 1540 (2004) and, in response to the latter's note dated 13 August 2004, has the honour to submit the Government of South Africa's national report on the steps taken to implement Security Council resolution 1540 (2004) (see annex).

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Annex to the note verbale dated 31 January 2005 from the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Committee

National report submitted by the Republic of South Africa to the Security Council Committee established pursuant to Security Council resolution 1540 (2004): Implementation of operative paragraphs 1 to 3 and 6 to 10 of resolution 1540 (2004)

Introduction:

The South African Government has taken note of the adoption by the UN Security Council of resolution 1540 (2004) on 28 April 2004, and has analysed the implementation of the Resolution.

The South African Government underlines its conviction that in the implementation of Resolution 1540 (2004), structures, such as the International Atomic Energy Agency (IAEA) and the Organisation for the Prohibition of Chemical Weapons (OPCW), which have already been established in accordance with international disarmament, non-proliferation and arms control agreements, should not be duplicated and that these organisations be utilised as the primary institutions in the international community's endeavours to combat the proliferation of weapons of mass destruction, including to non-State actors.

The Government of South Africa, like other Governments, would also be concerned if the Security Council were to assume legislative and treaty-making powers on behalf of the international community that are binding on all States and that are not envisaged by the Charter of the United Nations. Like other Governments, the Government of South Africa will also not accept externally prescribed norms or standards, whatever their source, on matters within the jurisdiction of the South African Parliament, including national legislation, regulations or arrangements, which are not consistent with South Africa's constitutional provisions and procedures, or are contrary to South Africa' national interests or infringe on its sovereignty.

OPERATIVE PARAGRAPH 1

1. *Decides that* all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

Response:

The South African Government has since its inauguration in May 1994, committed itself to a policy of non-proliferation, disarmament and arms control which covers all weapons of mass destruction and extends to concerns relating to the proliferation of conventional weapons. In terms of this policy,

South Africa is, therefore, committed to prohibiting the manufacture, acquisition, transport or use of weapons of mass destruction and their means of delivery, including by non-State actors.

The proliferation of chemical, biological, nuclear dual-use and missile delivery items is controlled by the South African Council for the Non-Proliferation of Weapons of Mass Destruction, which is appointed in terms of the Non-Proliferation of Weapons of Mass Destruction Act, 1993, (Act No. 87 of 1993) by the Minister of Trade and Industry, whereas the proliferation of nuclear material is controlled by the Minister of Minerals and Energy in terms of the Nuclear Energy Act, 1999 (Act No. 46 of 1999). The proliferation of other dual-use materials and items is controlled by the National Conventional Arms Control Committee (NCACC) which is a Statutory Committee of Cabinet Members constituted in terms of the National Conventional Arms Control Act, 2002 (Act No. 41 of 2002) and appointed by the President.

South Africa is Party to the following International Conventions and Regimes that have a bearing on proliferation:

- Protocol for the Prohibition of the use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare (Geneva Protocol). South Africa acceded 24 May 1930.
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention or CWC). South Africa ratified 13 September 1995.
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (1972) (Biological and Toxin Weapons Convention or BTWC). South Africa ratified 3 November 1975.
- The Nuclear Non-Proliferation Treaty (NPT). South Africa acceded 10 July 1991.
- Agreement between the International Atomic Energy Agency and the Government of the Republic of South Africa for the application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons. South Africa signed 16 September 1991.
- Additional Protocol to the Agreement between the International Atomic Energy Agency and the Government of the Republic of South Africa for the application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons. South Africa signed 13 September 2002.
- Treaty banning Nuclear Weapon Tests in the Atmosphere, Outer Space and Under Water. South Africa acceded 10 October 1963.
- Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil thereof. South Africa ratified 14 November 1973.
- Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency. South Africa ratified 10 August 1987.
- Convention on Early Notification of a Nuclear Accident. South Africa ratified 10 August 1987.
- Convention on Nuclear Safety. South Africa ratified 24 December 1996.
- The African Nuclear Weapon-Free Zone Treaty (Treaty of Pelindaba) (OAU). South Africa ratified 27 March 1998.
- Comprehensive Nuclear-Test-Ban-Treaty (CTBT). South Africa ratified 30 March 1999.

- Agreement between the Republic of South Africa and the Preparatory Commission for the CTBT Organization on the Conduct of Activities including Post-certification Activities, relating to International Monitoring Facilities for the Comprehensive Nuclear-Test-Ban Treaty. South Africa signed 20 May 1999.

South Africa is also a member of:

- The Zangger Committee. South Africa became a member on 21 October 1995.
- The Missile Technology Control Regime (MTCR). South Africa became a member on 13 September 1995.
- The Nuclear Suppliers Group (NSG). South Africa became a member on 5 April 1995.
- The Hague Code of Conduct against Ballistic Missile Proliferation. South Africa assented on 25 November 2002.

Furthermore, South Africa has included all MTCR, NSG, CWC and Wassenaar items in its lists of controlled items. Australia Group items have also been included on its controlled items lists, even though South Africa is not a member of the Group. The CWC and BTWC have been published as part of South African legislation.

OPERATIVE PARAGRAPH 2

2. *Decides also* that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

Response:

The South African Government has the following legislation or other legislative machinery in place to give effect to the measures contained in operative paragraph 2. These measures all apply to controlled items and are therefore applicable to both State and non-State actors:

Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993)

The Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Non-Proliferation Act) came into effect on 16 August 1993.

Nuclear Energy Act, 1999 (Act No. 46 of 1999)

Although nuclear dual-use items and the proliferation of these items are controlled by the NPC under the Non-Proliferation Act, nuclear material and the proliferation of such material is controlled under the Nuclear Energy Act.

National Conventional Arms Control Act, 2002 (Act No. 41 of 2002)

The National Conventional Arms Control Committee (NCACC) was constituted by the National Conventional Arms Control (NCAC) Act.

Firearms Control Act, 2000 (Act No. 60 of 2000).

The Act came into full operation on 1 July 2004.

The Protection of Constitutional Democracy against Terrorist and Related Activities Bill (POCDATARA)

The Protection of Constitutional Democracy Against Terrorist and Related Activities Bill (POCDATARA) which is presently being considered in Parliament, aims to provide, *inter alia*, for measures to prevent and combat terrorist and related activities, for measures to prevent and combat the financing of terrorist and related activities; and for amendments to the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993), and the Nuclear Energy Act, 1999

(Act No. 46 of 1999). The purpose of the amendments to the two last-mentioned Acts is to make further provision for the jurisdiction of South African courts in regard to offences relating to the use, or threats of use, of weapons of mass destruction and penalties to be imposed; and for further offences relating to the receipt, use, possession, transfer, disposal etc. of nuclear material.

Other legislation

In addition to legislation mentioned above, South Africa also has a vast legislative framework in which to prosecute acts falling within the framework of Resolution 1540 (2004). This includes the:

- Internal Security Act, 1982 (Act No. 74 of 1982);
- Criminal Law Second Amendment Act, 1992 (Act No. 126 of 1992);
- Explosives Act, 1956 (Act No. 26 of 1956);
- Merchant Shipping Act, 1957 (Act No.57 of 1951);
- Marine Traffic Act, 1981 (Act No. 2 of 1981);
- Maritime Zones Act, 1994 (Act No.15 of 1994);
- Defence Act, 2002 (Act No. 42 of 2002);
- National Key Points Act, 1980 (Act No. 102 of 1980);
- Protection of Information Act, 1982 (Act No. 84 of 1982);
- Films and Publications Act, 1996 (Act No. 65 of 1996) (hate and war speech);
- Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992);
- Agricultural Pests Act, 1983 (Act No. 36 of 1983);
- Animal Health Act, 2002 (Act No. 7 of 2002);
- Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997);
- National Nuclear Regulator Act, 1999 (Act No. 47 of 1999);
- Hazardous Substances Act, 1973 (Act No. 15 of 1973);
- Health Act, 2003 (Act No. 61 of 2003);
- Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- International Trade Administration Act, 2002 (Act No. 71 of 2002);
- Road Transportation Act, 1977 (Act No. 74 of 1977);
- Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998).

OPERATIVE PARAGRAPH 3

3. *Decides also* that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

Operative sub-paragraph 3 (a): Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

Response:

The production, use, storage and transport of certain chemicals are controlled under the Hazardous Substances Act, the Explosives Act and the Non-Proliferation Act. Biological pathogens are controlled under the Non-Proliferation Act, the Agricultural Pests Act, the Animal Health Act, the Genetically Modified Organisms Act and the Health Act.

Operative sub-paragraph 3 (b): Develop and maintain appropriate effective physical protection measures;

Response:

All plants and plant sites that manufacture or produce chemicals, biological items, nuclear material or nuclear dual-use items and missile delivery items, have perimeter security and other security procedures in operation, including in some instances, the use of television monitoring systems in order to secure the facilities in the event of outbreaks of fire, or against theft. Such systems are in standard use throughout South Africa and are augmented by security personnel in motor vehicles.

National Key Points Act, 1980 (Act No. 102 of 1980)

The National Key Points Act regulates safety measure issues pertaining to places or areas, which are so important that their loss, damage, disruption or immobilisation may prejudice South Africa.

Operative sub-paragraph 3 (c): Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

Response:

The legal import/export of goods from South Africa is dealt with by the South African Revenue Service (Customs and Excise) in terms of applicable legislation, whereas the Department of Home Affairs controls the entry/exit of persons. The South African Police Service (SAPS) deals with illegal conduct pertaining to these two aspects. Comprehensive policing methods are used to curb illegal activities on South African borders as well as at its ports of entry. South Africa, like most other countries, in responding to global security developments, is working on improving border controls to ensure maximum effectiveness.

Legislation mentioned earlier also covers this and other areas.

Operative sub-paragraph 3 (d): Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

Response:

Whereas most other States require export permits for the export or re-export of controlled goods, South Africa is one of very few States that require both import permits for the import of controlled goods, as well as export permits for the export or re-export of controlled goods. For the imports and exports of chemical, nuclear dual-use and missile controlled goods, import and export permits are required by the NPC under the Non-Proliferation Act. The import, export or transport of nuclear material requires import, export or transport permits by the Minister of Minerals and Energy through the Department of Minerals and Energy under the Nuclear Energy Act. The import of biological controlled goods requires import permits from the International Trade Administration Commission in consultation with the Department of Health or the Department of Agriculture under the International Trade Administration Act. The export or re-export of biological controlled goods requires an export permit from the NPC under the Non-Proliferation Act. The import, export or re-export of conventional armament items or dual-use items requires import or export permits from the NCACC.

Applications for such permits are submitted to the NPC, the Department of Minerals and Energy, the International Trade Administration Commission or the NCACC, who also regulate and issue the permits.

Legislation mentioned earlier also covers this and other areas.

OPERATIVE PARAGRAPH 6

6. *Recognizes* the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;

Response:

There exist a wide range of lists as will be seen from the documents attached.

OPERATIVE PARAGRAPH 7

7. *Recognizes* that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

Response:

The South African Government is considering possible ways in which assistance could be provided in the implementation of this resolution.

OPERATIVE PARAGRAPH 8

8. *Calls upon* all States:

Operative sub-paragraph 8 (a): To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

Response:

South Africa is a party to and fully implements all the requirements of the NPT, CWC and the BTWC. South Africa places importance on implementing all the provisions of such multilateral treaties including those covering nuclear disarmament.

Operative sub-paragraph 8 (b): To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties;

Response:

South Africa has adopted national rules and regulations to ensure compliance with its commitments under the key multilateral non-proliferation treaties.

Operative sub-paragraph 8 (c): To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

Response:

South Africa is committed to multilateral co-operation within the framework of the IAEA, the OPCW and the BTWC in order to achieve common objectives in the area of non-proliferation and to promote international co-operation for peaceful purposes and for adequate resources and assistance to be provided for developing countries.

Operative sub-paragraph 8 (d): To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

Response:

Industry is kept informed and updated on an on-going basis.

OPERATIVE PARAGRAPH 10

10. Further to counter that threat, *calls upon* all States, in accordance with their national legal authorities and legislation and consistent with international law, to take co-operative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;

Response:

A framework for international co-operation is provided for in the multilateral treaties to which South Africa is a Party as listed in operative paragraph 1 and the South African Government fully adheres to and implements this. In addition, the South African Government has entered into various bilateral treaties to further enhance this co-operation.

Over and above the international, legislative and other regulatory mechanisms already mentioned in this report, the South African Government also utilises the following additional legislation, arrangements and agreements to co-operate with other States to prevent, combat and eradicate the illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials:

International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996)

This Act facilitates the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between South Africa and foreign States. The Act provides for mechanisms to give judicial effect to requests for assistance in obtaining evidence providing, *inter alia,* for the examination of witnesses, mutual execution of sentences and the confiscation and transfer of the proceeds of crime.

Extradition Act, 1962 (Act No. 67 of 1962)

This Act provides for all matters related to extradition. Extradition is not dependent on a treaty and can take place, in accordance with the provisions of the act, on an *ad hoc* basis if the President consents to it.

Extradition Agreements

South Africa has concluded thirteen Extradition Agreements with other States. It should be noted, however, that extradition between South Africa and a foreign State is not dependent upon the existence of an Agreement and can take place on an *ad hoc* basis.

Mutual Legal Assistance Agreements

Since 1994, South Africa has concluded twelve Mutual Legal Assistance Treaties with other States. The treaties are designed to aid in the provision of mutual legal assistance on a bilateral level and provide, *inter alia*, for the requirements and the necessary mechanisms to give effect to a request for mutual legal assistance. Such a request for mutual legal assistance, however, is not dependent on the existence of a treaty, and can be given effect on an *ad hoc* basis in terms of the above-mentioned International Co-operation in Criminal Matters Act.